

*Q3 C5 X2*

19. The rail track as claimed in claim 15, wherein the upper side of the base body is provided with a layer of sound-absorbing material. --

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**REMARKS**

Filed concurrently with this Amendment is a Petition for Extension of Time extending the time in which to file a response to the outstanding Office Action by two months from April 23, 2003 until June 23, 2003.

Claims 8-12 and 14 remain in this application. Claims 8 and 9 have been amended, to substitute the phrase "channel-like recess" with the word "channel" and to substitute the term "recess" with "channel." Claim 15 has been added and is comprised of the combination of currently pending claims 8 with claim 9, which combination the Examiner has indicated is allowable. New claims 16-19 are comprised of existing claims 10, 11, 12 and 14 duplicated but made dependent upon independent claim 15. No new subject matter is believed to have been added by this Amendment.

In Section No. 2 of the Office Action, the Examiner rejects claims 8-12 and 14 under 35 U.S.C. §112, second paragraph, as being indefinite. In particular, the Examiner indicates the phrase "channel-like recess" is confusing in claims 8 and 9. Claims 8 and 9 have been amended as described above to overcome this rejection.

In Section No. 6 of the Office Action, the Examiner indicates that claim 9 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. §112, second paragraph set forth in Section No. 2. New independent claim 15 has been added and combines the limitations of independent claim 8 with the limitations of dependent claim 9. Therefore, claim 15 is believed to be patentably distinct over the prior art of record. Additionally, new

claims 16, 17, 18 and 19 have been added and include the limitations of currently pending claims 10, 11, 12 and 14 but dependent upon independent claim 15. For that reason, claims 16-19 depend from what is believed to be patentably distinct independent claim 15 and are, therefore, themselves believed to be patentably distinct.

In Section 4 of the Office Action, the Examiner rejects claims 8 and 10-12 under 35 U.S.C. § 103(a) as being obvious from the teaching of United States Patent No. 1,771,079 to Fischer, in view of the teaching of German Patent DT 916,830 to Dortmunder Union. The Applicant respectfully disagrees. Briefly stated, the Fischer patent is directed to a rail expansion sound deadener, whereby, as illustrated in Figure 1, for example, segments b, c and d of a rail filler are placed against and conform to the shape of rail a. The rail filler, as stated on page 2, lines 41-55 of the Fischer patent, may be comprised of bituminous material, along with a binder which may consist of dissolved rubber. The rail filler may also have ground corn cob. As a result, the dissolved rubber or the corn cob provides resiliency to the rail filler. However, independent claim 8 clearly specifies that each rail side surface is completely covered when a second layer of yielding material, wherein the stiffness provided in the horizontal direction by the second layer of each side surface is greater than the stiffness provided in the vertical direction by the first layer. This is not true in the arrangement disclosed either in the Fischer patent or in the Dortmunder Union patent. The Fischer patent does not disclose a second layer of yielding material having a greater stiffness value in the horizontal direction than the first layer of yielding material in the vertical direction. The Dortmunder Union patent in Figure 1 teaches a rail "b" embedded in a resilient material "c" and positioned within a rigid base "a." The stiffness in the horizontal direction is less than the stiffness in the vertical direction. Figure 2 shows a rail "b1" embedded in a resilient material "c" and positioned within a rigid base "d." In neither of these figures is there shown an arrangement where the stiffness in the horizontal direction is greater

than the stiffness in the vertical direction. If anything, the figures suggest the opposite, wherein the stiffness in the horizontal direction is less than the stiffness in the vertical direction.

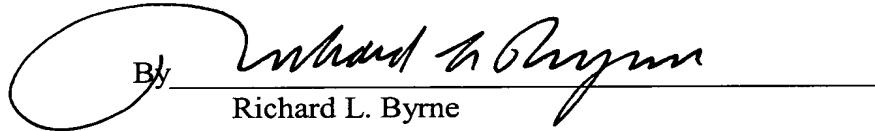
For these reasons, the Applicant believes that claim 8 is not obvious from the teaching of the Fischer patent, in view of the teaching of the Dortmunder Union patent, and is patentably distinct over the teaching of these references. Additionally, claims 9 and 10-12, by way of their dependence upon what is believed to be patentably distinct independent claim 8, are themselves believed to be patentably distinct.

In Section No. 5 of the Office Action, the Examiner rejects claim 14 under 35 U.S.C. §103(a) as being obvious from the teaching of the Fischer patent, in view of the teaching of the Dortmunder Union patent and, further, in view of teaching of Japanese Patent JP-209340 to Fujita. By way of its dependence upon what is believed to be patentably distinct independent claim 8, dependent claim 14 is itself believed to be patentably distinct.

Reconsideration of the rejections and allowance of pending claims 8-12 and 14-19 are respectfully requested.

Respectfully submitted,

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**VERSION WITH MARKED-UP CHANGES OF CLAIMS 8 and 9**

8. (Five times Amended) A rail track comprising at least one rail supported by a non-compressible, concrete base body, with the base body provided with a channel-like ~~recess~~ for receiving the rail such that a running surface of a head of the received rail lies free, with a bottom of the channel-like ~~recess~~ provided with a first layer of yielding material, wherein along its entire surface the first layer contacts the ~~recess~~ channel bottom and extends under a bearing surface of a foot at the bottom of the rail, with rail side surfaces between the running surface and the bearing surface of the rail, wherein each rail side surface is completely covered with a second layer of yielding material within the bounds of the ~~recess~~ channel, wherein stiffness provided in the horizontal direction by the second layer on each side surface is greater than stiffness provided in the vertical direction by the first layer, wherein the bottom of the channel-like ~~recess~~ fully supports the rail and wherein the first layer of yielding material and each of the second layers of yielding material are physically separate from one another.

9. (Once Amended) The rail track as claimed in claim 8, wherein the space between the second layer and the channel-like ~~recess~~ is filled with a filler body of non-compressible material.